

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 20 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-89
AURIO A. MATOS)	File No. BPH-911114MS
LLOYD SANTIAGO-SANTOS and)	File No. BPH-911115MP
LOURDES RODRIGUEZ BONET)	
For Construction Permit for)	
a New Station on Channel)	
293A in Culebra, Puerto Rico)	

To: The Honorable Joseph P. Gonzalez
Administrative Law Judge

**REPLY TO OPPOSITION TO
PETITION TO ENLARGE ISSUES**

Lloyd Santiago-Santos and Lourdes Rodriguez Bonet ("Santos and Bonet"), by their attorneys, respectfully submit this their Reply to the Opposition filed by Aurio A. Matos on July 9, 1993 to the Santos and Bonet Petition to Enlarge Issues ("Petition").

In support, the following is respectfully shown:

Petition Timely and Properly Filed

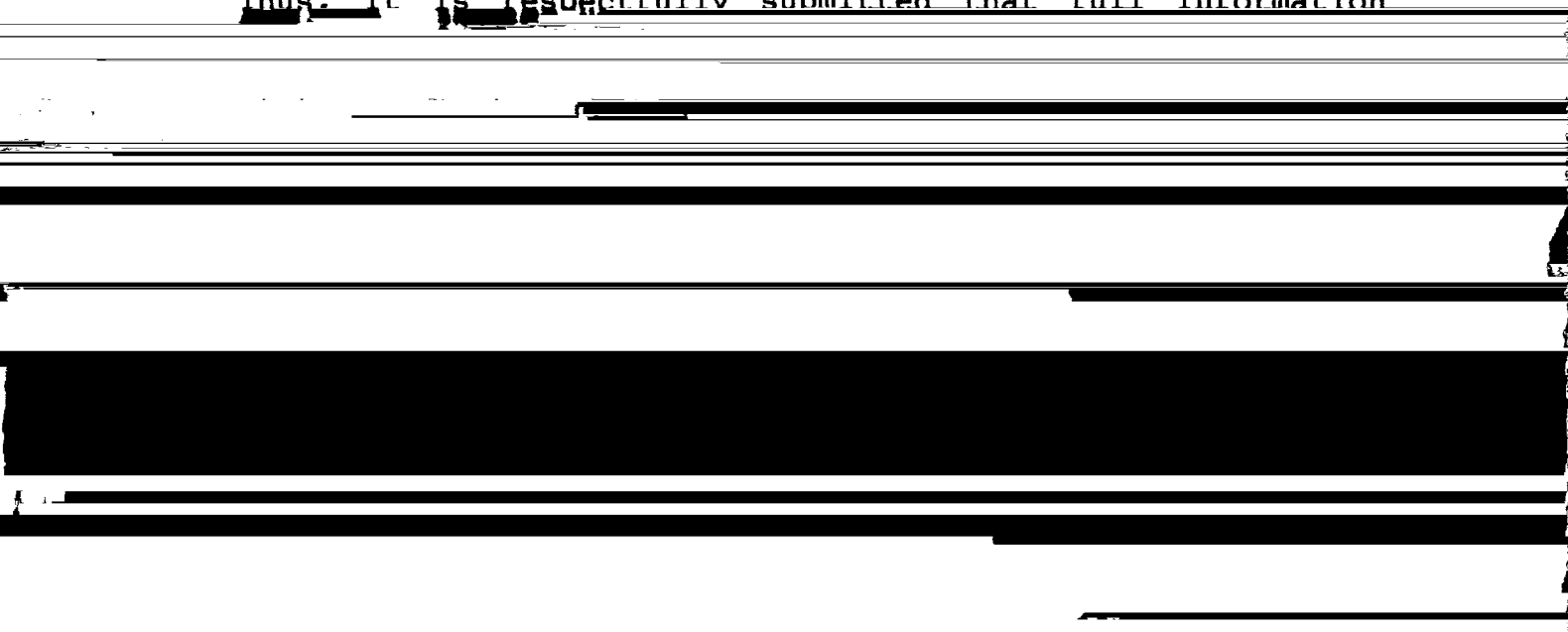
The Petition was premised upon information exchanged pursuant to the standard document production procedures applicable to this proceeding and responses (or more accurately lack of responses) to a supplemental document production request by Santos and Bonet. The supplemental document request was filed promptly after receipt of

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material in response of the standard document production on May 5, 1993. Matos, through his counsel, requested an extension of time to respond to the request. That extension was granted by Order released May 25, 1993. The Petition to Enlarge was filed within 15 days of receipt of the response to the request for supplemental documents.

It is Santos and Bonet's position that it was essential, as well as only fair, to provide opportunity for the development of additional documentation that may have shed light on or clarified questions raised as a result of the initial document production. If there were additional documents relating to the availability of the site that may have addressed the Department of Fish and Wildlife issues, and such document was produced in response to supplemental requests, it may have rendered the petition unnecessary. Thus, it is respectfully submitted that full information



facts alleged in the petition, we are aware of no such requirement in the Commission's Rules specifying that any pleading filed must be supported by statement from the principal verifying the filing of such pleading. See generally §1.52 of the Commission's Rules.

Financial Issue

As counsel for Matos recognized, the issue is the sufficiency of the presentation upon which Matos claims reasonable assurance of the availability of funds to construct and operate the proposed facilities. As argued in the Petition, even if it is assumed that the \$67,000 which Matos demonstrated was in a savings account in November, 1991 is available, it is insufficient to meet the estimated costs to construct and operate of some \$228,000. Thus, Matos must look to other sources. In this case, Mr. Matos relies on the Southern Mortgage commitment to make up the short fall. It is this "commitment" that Santos and Bonet have challenged on two grounds:

1. It has not been demonstrated that Southern Mortgage has net liquid assets available to make the \$250,000 loan since Southern Mortgage is not a recognized financial institution; ^{1/} and

^{1/} Fourth Report and Order, 4 FCC Rcd. 2542, 2547 (¶32) "In this regard we will require questionable entities to demonstrate that they have the funds available to cover the total commitments they have made."

2. The commitment on its face fails to meet the requirements for reasonable assurance of the availability of funds.

Turning to the efficacy of the letter measured against the standards for such showings, contrary to the wishful thinking of counsel for Matos and accepting the language in its simplest form, it is not reasonable or appropriate to conclude that a commitment has been made by Southern Mortgage. The writer of the letter merely states that a meeting was held and documents were presented. The critical terms, i.e., interest rate and duration of the loan, have not been specified. See Chapman Radio and Television Co., 70 FCC 2d 2063, 2072 (1979) ("The tentative terms of the loan must be specifically identified."). Thus, this critical element necessary for a demonstration of reasonable assurance of the availability of funds is missing. If interest rates are not specified, how can one even hope to conclude that there has been a meeting of the minds with respect to such rates. If it was the intent of Southern Mortgage to identify the rates as floating depending on market conditions, that could have been and should have been specified. It was not. Surely Southern Mortgage, as other financial institutions do, had a range for the term of such loans, i.e., 5-7 years. Thus, even assuming that Southern Mortgage was familiar with and conducted an analysis of the credit worthiness of the project, it cannot be concluded

that the critical terms of the loan have been agreed to by both parties. Thus, a claim of reasonable assurance of the availability of the necessary funds fails.

The letter itself is the fact upon which the Petition is premised. No affidavit is required. See §1.229(d) of the Rules. Thus, Santos and Bonet urge the Presiding Judge to add the specified issues so that the financial qualifications of Matos can be explored. If it is concluded that Matos was not financially qualified when he filed his Form 301 application, that should be the end of the inquiry and the application would be subject to dismissal.

Site Availability

The one-page letter from Mr. Colon Ventura was relied upon by Mr. Matos as evidence of the reasonable assurance of the availability of the proposed transmitter site specified in his Culebra FM application. As argued in the Petition to Enlarge Issues, the letter on its face fails to meet the test for such reasonable assurance. No terms are specified and no conditions are indicated. It is submitted that notwithstanding the Fish and Wildlife permit issue, that the reliance on the Colon Ventura letter is unreasonable. For no other reason, a site availability issue must be specified.

The cases relied upon by Matos are inapposite. If Mr. Matos had proposed a site of his own on Fish and Wildlife land, perhaps his argument might be stronger. However, Mr.

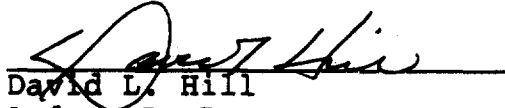
Matos proposes to sub-lease space on property licensed by the Fish and Wildlife Service to Mr. Colon. The sub-lease prohibition is absolute. See attached correspondence from the Department of Fish and Wildlife. Thus, Mr. Colon Ventura did not have it in his power to make available space to Mr. Matos, even assuming that that was the intent of the September 23, 1991 letter. Thus, a prima facie issue has been raised concerning the availability of the proposed site for use by Mr. Matos as proposed in his application.

Thus, the Petition to Enlarge should be granted and the specified issues added.

Respectfully submitted,

LLOYD SANTIAGO-SANTOS
and
LOURDES RODRIGUEZ BONET

By:


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Dated: July 20, 1993

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Caribbean Islands National Wildlife Refuge
P.O. Box 510, Carr. 301, Km. 5.1
Boqueron, Puerto Rico 00622

July 16, 1993

Audrey P. Rasmussen
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006-3483

Dear Ms. Rasmussen:

I am writing in response to your request related to Client/Matter No.: 31362-001 regarding the use of the site on Culebra NWR where Mr. José C. Colón's FM radio broadcasting antenna facility is located. Mr. Colón has had use of the site in question since before the U.S. Navy transferred the lands to the U. S. Fish and Wildlife Service (FWS) in 1983. The FWS has since issued a Special Use Permit (SUP) permitting use of the site for operation of an FM broadcasting station. This SUP is renewable on a yearly basis.

The SUP issued to Mr. Colón permits the operation of one commercial

CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 20th day of July, 1993, the foregoing **REPLY TO OPPOSITION TO PETITION TO ENLARGE ISSUES** was served to the following persons by First Class Mail:

* The Honorable Joseph P. Gonzalez
Administrative Law Judge
Federal Communications Commission
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Gladys L. Nichols

* Hand Delivered

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